

SENATE BILL 2059

By Kurita

AN ACT to amend Tennessee Code Annotated, Title 20, Chapter 5, Part 1; Title 25, Chapter 1, Part 1 and Title 29, Chapter 26, Part 1, relative to the reform of tort law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-26-115, is amended by adding the following new subsection:

(e)

(1) In any action for damages alleging professional negligence against any health care provider, the plaintiff shall file with the complaint or within sixty (60) days of filing the complaint an affidavit of an expert competent to testify, which affidavit shall set forth specifically at least one negligent act or omission claimed to exist, the factual basis for such claim, and that the negligent act or omission more likely than not caused an injury which otherwise would not have occurred.

(2) If a plaintiff files an affidavit which is allegedly defective and the defendant to whom it pertains alleges, with particularity, by motion to dismiss filed as or contemporaneously with its initial responsive pleading, that such affidavit is defective, the plaintiff's complaint is subject to dismissal with prejudice for failure to state a claim.

(3) If a plaintiff fails to file an affidavit as required by this section or such affidavit is found to be defective and the defendant raises the failure to file such an affidavit by motion to dismiss filed as or contemporaneously with its initial

responsive pleading, such cause of action shall be dismissed with prejudice and shall not be subject to the provisions of § 28-1-105.

(4) A responsive pleading is not required to be filed by any defendant until thirty (30) days after the required affidavit is filed and served.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 26, Part 1, is amended by adding the following as a new section:

Section 29-26-122.

(a) In any action for damages alleging professional negligence against a healthcare provider, the plaintiff shall file contemporaneously with the filing of the complaint, a HIPAA-compliant medical authorization form. Failure to provide this authorization shall subject the complaint to dismissal.

(b) The authorization shall provide that the attorney representing the defendant is authorized to obtain protected health information, including, but not limited to, mental health and drug and alcohol abuse treatment records, contained in medical records to facilitate the investigation, evaluation, and defense of the claims and allegations set forth in the complaint which pertain to the plaintiff or, where applicable, the plaintiff's decedent whose treatment is at issue in the complaint. The authorization shall include the defendant's attorney's right to interview plaintiff's or decedent's treating physician or physicians with regard to the care and treatment of the plaintiff or, where applicable, the plaintiff's decedent.

(c) The authorization shall provide for the release of all health care information, including, but not limited to, mental health and drug and alcohol abuse treatment records, and shall authorize the release of such information by health care provider maintaining health care records of the plaintiff or the plaintiff's decedent.

SECTION 3. Tennessee Code Annotated, Section 20-5-113, is amended by deleting the section in its entirety and substituting instead the following:

Where a person's death is caused by the wrongful act, fault, or omission of another and suit is brought for damages as provided by §§ 20-5-106 and 20-5-107, the party suing shall, if entitled to damages, have the right to recover for the mental and physical suffering, loss of time, and necessary expenses resulting to the deceased from the personal injuries. If the party suing is the spouse, parent, or child of the decedent, the party bringing the action also shall be entitled to recover damages for loss of consortium. This right to loss of consortium damages shall not extend to other familial relationships.

SECTION 4. Tennessee Code Annotated, Section 25-1-106, is amended by adding the following new sentence at the end thereof: "Such right does not extend to other familial relationships."

SECTION 5. For the purposes of this Act:

(1) "Health care provider" means any person or entity, providing health-related services, regulated by the state pursuant to title 63 or title 68, chapter 11;

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect January 1, 2006, the public welfare requiring it.